



STATE OF WISCONSIN
Department of Employee Trust Funds
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CORRESPONDENCE MEMORANDUM

DATE: November 23, 2004

TO: Members of the Employee Trust Funds Board, Teacher Retirement Board and Wisconsin Retirement Board

FROM: Robert Weber, DETF Chief Counsel

SUBJECT: Proposed changes in Administrative Rule-making process

REQUESTED ACTION:

Staff requests that the Employee Trust Funds Board, Teacher Retirement Board and Wisconsin Retirement Board officially agree to a rule-making process under which a rule will not formally come before the Board for action until the Department believes the final draft report is ready to submit to the Legislature. At that point, the Board's approval will be requested.

Background

Wis. Stat. § 40.03 (2) (i) provides that the Department Secretary shall (with the approval of the ETF Board) promulgate all rules that are required for the efficient administration of the fund or of any of the benefit plans established by Chapter 40. In addition to approval by the ETF Board, rules promulgated under Wis. Stat. § 40.03 (2) (i) that relate to teachers must be approved by the Teachers Retirement Board and those rules relating to participants other than teachers must be approved by the Wisconsin Retirement Board.

There are some exceptions. Wis. Stat. § 40.03 (2) (i) does not concern rules relating to the deferred compensation program, any group insurance plan or retirement reciprocity. The DETF Secretary also has separate authority to promulgate administrative rules related to administering investments in the Fixed and Variable Retirement Investment Trusts by separate retirement systems, if the ETF Board allows such investments to be made.

It generally takes a year or more to promulgate an administrative rule, assuming there are no major problems with the rule. The process includes a number of mandatory waiting periods, such as those between publication of a scope statement and approval of the scope statement or between notice of a public hearing and holding the hearing. Other delays are simply inherent in the process. For example, publication in the

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Administrative Register is required at several steps in the process. The Administrative Register is published twice per month and the publication deadline is two weeks, or more, in advance. Also, for each step requiring formal approval by a Board, there are delays inherent in getting materials to Board members and providing proper notice of the Board meeting. The need for approval by multiple Boards, for some kinds of rules, may complicate this process even further.

The Department wants to streamline administrative rule-making as much as possible, while still providing that each Board will retain final approval over a rule under that Board's area of responsibility. Our goal is to standardize the process for all DETF rulemaking, so this same process is being recommended to all the Boards. The streamlining effort began in 1996 when additional steps were added to the rule-making process by the Legislature. At the suggestion of the Department, the ETF Board delegated some of its new responsibilities to the Department at that time. At its last meeting, on November 16, the Group Insurance Board approved the process described in this memo with respect to all administrative rules applying to the programs for which the GIB is responsible.

Details of Proposal:

This process will apply to administrative rule-making involving rules required for the administration of the Wisconsin Retirement System, including disability annuity benefits, as well as duty disability benefits, sick leave conversion credits and all matters for which the Employee Trust Funds Board, Teachers Retirement Board and Wisconsin Retirement Board are separately or jointly responsible. The process already applies to group insurance matters.

The Department of Employee Trust Funds will be responsible for:

- Originating the rule proposal by drafting and publishing the required Scope Statement.
- Drafting the Proposed Rule and submitting it to the Legislative Council Staff for review.
- Publishing the required Notices of Submission and Notice of Public Hearing.
- Holding any necessary hearing.
- Drafting the final text of the proposed rule and the Final Draft Report on the rule.

The DETF Secretary will be responsible for approving the Scope Statement and Notices of Submission and Public Hearing.

The Employee Trust Funds Board, Teachers Retirement Board and Wisconsin Retirement Board will be regularly informed of the status of the rule-making through each step of the procedure. Board members will be sent informational copies of the Scope Statement, Proposed Rule and Final Draft Report, including the intended final text of the rule. Any Board member may request more information from

me or the rule's contact person, or ask that a discussion on the rule be added to the agenda for a Board meeting.

The Board will be asked to approve the rule after receiving the Final Draft Report. This will normally be the only time the rule appears as an action item on the Board agenda. The Final Draft Report must include not only the final text of the rule, but also an analysis and fiscal estimate for the rule, a list of the persons appearing at the public hearing, a summary of public comments plus an explanation of any modifications made in rule as a result of comments or testimony received at a public hearing.

Public oral argument directly to the Board about a rule will not occur. However, in addition to the Final Draft Report, the record of the public hearing (normally a tape recording) is available for review, along with any copies of any written comments received.

During the Legislative review process that follows, the DETF Secretary will decide whether to make changes to the rule of a minor or editorial nature, or to withdraw the rule, altogether. If the Secretary determines that major changes of a substantive nature are necessary before the rule can successfully be promulgated, the redrafted version of the rule will again be brought before the Board for its approval.

Staff requests Board approval to implement this process immediately.